IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

:JUDGMENT:

Ramesh Chand Mali & ors. Vs. The State of Raj. & ors.

D. B. Civil Special Appeal (W) No.350/2004 under Section 18 of the Rajasthan High Court Ordinance, 1949 against the judgment dated 9.4.2004 passed in S. B. Civil Misc. Restoration Application No.123/2004 arising out of S.B. Civil Writ Petition No.1272/1998.

Date of Judgment ::: January 24, 2007

PRESENT

Hon'ble Justice Mrs. Gyan Sudha Misra
Hon'ble Justice Mr. K. C. Sharma

Mr. Anurag Sharma, for the appellants.
Mr. S.S. Sharma, Addl.G.A., for the respondents.

By the Court:

This appeal has been preferred against the order of the learned Single Judge dated 9.4.2004 by which the application for restoration/recalling the order of dismissal of the writ petition was dismissed.

The counsel for the appellants stated that the writ petition stood dismissed on account of non-compliance of the per-emptory order due to fault of the counsel who in fact was legally responsible to make such

compliance and, therefore, it was a fit case for restoration as ultimately the petitioners/appellants herein would have to bear the consequence of the dismissal of the writ petition which was dismissed not on merit but on account of non-compliance of the per-emptory order. It was further stated that the writ petition ultimately will have to be withdrawn by the appellants in order to take recourse to the remedy before the conciliation officer but the same cannot be done as the writ petition has already been dismissed.

In view of the aforesaid facts and in the interest of justice, we grant liberty to the appellants to approach the learned Single Judge for modification of the order of dismissal of the writ petition for the reasons stated hereinabove.

The appeal, therefore, stands disposed of with the aforesaid liberty.

[**K.C. Sharma**],**J.** [**Gyan Sudha Misra**],**J.**

/skm/